

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 954 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A.M. ACHARYA

Versus

RAM DUGDHALAYA

Appearance:

MR PM THAKKAR for Petitioner

NOTICE SERVED for Respondent No. 1

MR BJ JADEJA for Respondent No. 2

MR BY MANKAD, ADD.PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/09/98

ORAL JUDGEMENT

Original complainant, being aggrieved by an order of acquittal recorded by learned Judicial Magistrate, First Class, (Municipal) Rajkot on 19.10.1989 in Criminal Case No. 566/82 wherein the accused were tried for offences punishable under sections 7 (1) with 16 (1) (a) (i) of the Prevention of Food Adulteration Act has preferred this appeal. Respondents No.1, 2 and 3 are accused Nos. 1, 2 and 3 in the criminal case.

2. Before the matter is heard on merits, Mr.

Jadeja, learned advocate for respondent No.3 [original accused No.3] states that the appeal abates qua respondent No.3 as he has expired on 22.10.1994. He has also placed before the Court a copy of the death certificate issued by the competent authority; The same is ordered to be taken on record. The appeal abates qua the respondent No.3 [original accused No.3].

3. Food Inspector, in the presence of Panch and staff members, visited the shop run by the respondent No.3 along with the respondent No.2, wherein the Food Inspector found that Dhirubhai Raghavbhai, respondent No.3, was selling milk. Respondent No.2 was joined as an accused as his name appears in the register maintained by the Municipal Corporation, which is known as Demand Register (vide Exh.16). It is not the case of the Food Inspector that accused No.1 is a partnership firm or is run by an association of person or in co-ownership.

4. One of the sample was forwarded to the Public Analyst for analysis and on receiving the report to the effect that the sample is not according to the standard, the prosecution came to be launched against the accused, after obtaining a consent.

5. Several contentions were raised before the trial Court, such as:-

- (i). Whether the complainant is a qualified Food Inspector?
- (ii). Whether the complainant proves that while collecting the samples, the samples were collected in accordance with the rules and the procedure with regard to sealing and packing etc was followed?
- (iii). Is it proved by the prosecution that the sample is adulterated.
- (iv). Is it proved that intimation was given by the Local (Health) Authority for getting the same analysed through Central Food Laboratory.
- (v). Is it proved by the complainant that the competent authority accorded consent to file prosecution.

6. Going through the record it appears that the trial Court has erred in deciding all the points against the prosecution.

7. It is the prosecution case that the accused No.2 was not present at the time of sale. There is no evidence to show that he was a partner of the firm or was

in any way in charge of and was responsible for the conduct of the business. The prosecution has miserably failed to prove by leading satisfactory evidence that the accused No.1 is a firm or a co-ownership or an association of persons dealing in the name of accused No.1. Merely because for the sake of convenience accused No.3 might have urged the Corporation to permit accused No.2 to carry on the business in his absence, it does not mean that he becomes a partner of the accused No.1.

8. The prosecution is required to lead evidence to show how accused No.2 is connected with the accused No.1. As mentioned earlier, it appears that accused No.3 was dealing in the name of accused No.1. An inference cannot be drawn that the accused No.2 is equally responsible only because his name was found in the Demand Register maintained by the Municipal Corporation.

9. Having heard the learned advocates and the Additional Public Prosecutor, this Court is in agreement with the final conclusion arrived at by the trial Court, though on a different ground.

In the result, the appeal stands dismissed.

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